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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 IN RE: SOCIAL MEDIA ADOLESCENT
12 ADDICTION/PERSONAL INJURY
13 PRODUCTS LIABILITY LITIGATION

14 THIS DOCUMENT RELATES TO:

15 People of the State of California, et al.

16 v.

17 Meta Platforms, Inc., Instagram, LLC, Meta
18 Payments, Inc., Meta Platforms Technologies,
19 LLC

20 -----
21 Office of the Attorney General, State of Florida,
22 Department of Legal Affairs

23 v.

24 Meta Platforms, Inc., Instagram, LLC., Meta
25 Payments, Inc.

26 -----
27 State of Montana, ex rel. Austin Knudsen,
28 Attorney General

v.

Meta Platforms, Inc., Instagram, LLC, Facebook
Holdings, LLC, Facebook Operations, LLC,
Meta Payments, Inc., Meta Platforms
Technologies, LLC, Siculus, Inc.

MDL No. 3047

Case No. 4:22-md-03047-YGR
4:23-cv-05448-YGR
4:23-cv-05885-YGR
4:24-cv-00805-YGR

**ATTORNEYS GENERAL RESPONSE TO
NON-META DEFENDANTS' MOTION TO
CERTIFY FOR INTERLOCUTORY
APPEAL**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

1 The combined State Attorneys General (“State AGs” or “AGs”) respond to the non-Meta
 2 Defendants’ Motion to Certify for Interlocutory Appeal, (22-md-03047 Dkt. 1462), and Meta’s
 3 Conditional Joinder of the same, (22-md-03047 Dkt. 1463).¹

4 **I. INTRODUCTION**

5 Meta asks this Court to certify for appeal the Court’s October 15, 2024 Order Largely
 6 Denying in Part Meta’s Motion to Dismiss the Multistate Attorneys General Complaint but
 7 Limiting the Scope of Claims (“State AG Order”) (22-md-03047, Dkt. 1214; 23-cv-05448 Dkt.
 8 123), but only with respect to the Court’s refusal to dismiss the State AGs’ deception claims. The
 9 State AGs have now separately asked the Court to certify the State AG Order with respect to the
 10 dismissal of their unfairness claims (22-md-3047 Dkt. 1534; 23-cv-05448 Dkt. 166). Because the
 11 dismissal of the AGs’ unfairness claims forms the very basis of Meta’s argument that the
 12 deception claims should also be dismissed, this Court should not consider certifying Meta’s issue
 13 unless it first decides to certify the State AGs’ issue. If the Court does decide to certify the State
 14 AGs’ issue on the unfairness claims, the State AGs take no position on also certifying the
 15 deception claims, although they present a much weaker case for certification.

16 **II. PROCEDURAL BACKGROUND**

17 On October 24, 2023, thirty-three State AGs sued Meta, alleging that Meta had designed
 18 its platforms to induce excessive use, with serious consequences for youth mental health, had
 19 deceived the public about the dangers of its platforms, and had collected data on under-13 users in
 20 violation of the Child Online Privacy Protection Act. (23-cv-05448 Dkt. 1, ¶¶ 1–8). The State
 21 AGs brought a federal cause of action under COPPA and state consumer protection claims
 22 alleging unfair business practices as well as deceptive business practices. (23-cv-05448 Dkt. 1, ¶
 23 9). No other claims were alleged. The State AGs’ complaint was incorporated into multidistrict
 24 litigation where private plaintiffs had raised separate products liability and tort theories, including
 25 failure to warn.

26
 27 ¹ The AGs take no position on the Defendants’ other Motion to Certify for Interlocutory
 28 Appeal, (22-md-03047 Dkt. 1460), which relates to two Motion to Dismiss Orders (22-md-03047
 Dkts. 1267, 1332) covering the school districts’ claims.

1 In its Motion to Dismiss, Meta argued, among other things, that Section 230 barred each
 2 of the State AGs’ unfairness and deception claims. (22-md-03047 Dkt. 517, pp. 19–23; 23-cv-
 3 05448 Dkt. 83, pp. 19–23). The Court dismissed the unfairness claims as to certain product
 4 features but allowed the deception claims to continue.² (22-md-03047 Dkt. 1214, pp. 96–97; 23-
 5 cv-05448 Dkt. 123, pp. 96–97).

6 Specifically, the Court concluded Section 230 barred unfairness claims based on the
 7 following features: (1) Infinite scroll and autoplay features; (2) Ephemeral content features;
 8 (3) Disruptive audiovisual and vibration notifications and alerts; (4) The quantification and
 9 display of “Likes”; and (5) Meta’s algorithmic service of content according to “variable
 10 reinforcement schedules.” (22-md-03047 Dkt. 1214, pp. 21–31; 23-cv-05448 Dkt. 123, pp. 21–
 11 31). The AGs had argued that their claims targeted website design irrespective of content, and
 12 would not require Meta to monitor, restrict, edit, or remove any content. (22-md-03047 Dkt. 599,
 13 pp. 15–16; 23-cv-05448 Dkt. 95, pp. 15–16) The Court disagreed, reasoning, in short, that
 14 unfairness claims aimed at those features targeted Meta’s role as a publisher of third-party content
 15 and therefore implicated Section 230. (22-md-03047 Dkt. 1214, p 25, n. 21; Dkt. 430, p 16–18;
 16 23-cv-05448 Dkt. 123, p 25, n. 21).

17 With respect to the deception claims, the Court allowed the AGs’ deception claims based
 18 on Meta’s omissions to proceed.³ (22-md-03047 Dkt. 1214; 23-cv-05448 Dkt. 123). The Court
 19 cited myriad cases holding that deception and failure-to-warn claims do not implicate Section 230
 20 because, essentially, they address the defendant’s own conduct rather than their publication of
 21 third-party content. (*Id.*, pp. 35–36).

22
 23
 24 ² In the State AG Order, the Court analyzed the AGs’ omission-based deception claims
 25 and the Private Plaintiffs’ failure-to-warn claims jointly, referring to them all as “failure-to-warn”
 26 claims. (22-md-03047 Dkt. 1214, pp. 31–37; 23-cv-05448 Dkt. 123, pp. 31–37). Defendants, too,
 refer to both using the “failure to warn” shorthand. (22-md-03047 Dkts. 1462, 1463). Because the
 AGs plead statutory deception claims and not common-law failure-to-warn claims, which are
 distinct, the AGs continue to distinguish their claims as deception claims.

27 ³ The State AG Order acknowledged that Meta did not seek dismissal of claims based in
 28 *affirmative misrepresentations* and that such claims would not implicate Section 230. (22-md-
 03047 Dkt. 1214, p. 31; 23-cv-05448 Dkt. 123, p. 31).

1 In their Motion to Certify, Defendants request this Court certify the following question:
 2 “whether the MDL Plaintiffs’ failure-to-warn claims targeted at certain of Defendants’ platform
 3 features are barred by Section 230 of the Communications Decency Act when (as the Court
 4 previously held) all other claims targeting these same features are barred by Section 230.”
 5 Defendants’ question assumes that the Court’s ruling as to the AGs’ unfairness claims was
 6 correct.

7 The AGs have now also sought interlocutory appeal of the unfairness claims deemed
 8 barred by Section 230 in the same State AG Order (22-md-03047 Dkt. 1214; 23-cv-05448 Dkt.
 9 123).

10 **III. ARGUMENT**

11 To certify an order for interlocutory appeal under 28 U.S.C. § 1292(b), the district court
 12 judge must find that three requirements have been met: (1) the order involves a controlling
 13 question of law; (2) there is substantial ground for difference of opinion concerning this question
 14 of law; and (3) certification may materially advance the ultimate termination of the litigation.

15 On the first prong, the AGs do not dispute that the Section 230 issues present controlling
 16 questions of law for this case, but answering the questions as to the unfairness arguments will
 17 determine the scope of the questions implicating the deception argument.

18 On the second prong, the AGs’ question arising from the State AG Order presents the
 19 stronger case for interlocutory review. As argued in the AGs’ Motion to Certify, there is no
 20 binding Ninth Circuit precedent compelling dismissal of claims which implicate product features
 21 irrespective of the content published, and the Third Circuit recently held that social media
 22 algorithm recommendations are not covered by Section 230. *Anderson v. TikTok, Inc.*, 116 F.4th
 23 180 (3d Cir. 2024). Several state courts evaluating substantially similar unfairness claims against
 24 Meta and TikTok have found that Section 230 does not bar these claims.⁴ That is to say, there is

25 ⁴ Those decisions have been cited as supplemental authority in this case. *See, e.g.*, Dkt.
 26 1045-2, pp. 13 (Vermont Superior Court held that because “[t]he State is not seeking to hold Meta
 27 liable for any content provided by another entity,” but instead “seek[ing] to hold the company
 28 liable for intentionally leading Young Users to spend too much time on-line,” “[t]he State’s
 claims do not turn on content, and thus are not barred by Section 230.”); Dkt. 1045-3, pp. 11-12
 (Utah district court held that because “the Division’s claims rest on [Meta]’s own acts: their use
 (continued...)

1 fertile ground for disagreement as to whether the AGs’ unfairness claims target the publication of
2 third-party content.

3 There is much less ground for differences of opinion on Meta’s proposed question.
4 Defendants rely on a single case to open a hole in otherwise consistent caselaw. But that case,
5 *Est. of Bride by & through Bride v. Yolo Techs., Inc.*, 112 F.4th 1168 (9th Cir. 2024), is
6 distinguishable. There, the Court held that certain failure-to-warn claims were barred by Section
7 230 because the underlying claims relied entirely on the allegation that the company should have
8 moderated harmful content. *Id.* at 1182 (“In summary, Plaintiffs’ product liability claims attempt
9 to hold YOLO responsible as the speaker or publisher of harassing and bullying speech. Those
10 product liability claims that fault YOLO for not moderating content are foreclosed.”). But the
11 State AG Order allowed deception claims to proceed because they were based on non-content
12 moderation grounds—the omission of information as to “known risks of addiction attendant to
13 platform features or as to platform construction in general.” (22-md-03047 Dkt. 1214, p. 97; 23-
14 cv-05448 Dkt. 123). That reasoning is distinct from *Yolo*.

15 Instead, it is consistent with *Doe v. Internet Brands*, 824 F.3d 846 (9th Cir. 2016). There,
16 a woman using a professional networking website for models was invited to a false audition
17 through the site and date raped—a scheme the website was aware was being perpetrated. *Id.* at
18 848–49. The Ninth Circuit ruled Section 230 did not bar a failure-to-warn claim because the
19 plaintiff did not seek to hold the website liable for any third-party content published or not
20 removed. *Id.* at 851. And the duty to warn of a possible known harm under those facts would not
21 change how the website published or monitored content, *Id.* Similarly, here Meta’s alleged
22 deception relates to the known harms arising from its websites’ addictive designs, but not related
23 to any decisions to publish or remove particular content.

24 of features and practices to target children into spending excessive amounts of time on their
25 platforms and their misrepresentations about the safety of those platforms” “Section 230 does not
26 foreclose the Division’s claims at this stage.”); Dkt. 1140-1, p. 21 (D.C. superior court held that
27 “Section 230 does not immunize Meta from liability for the unfair trade practice claims,” which
28 “allege[] that it is the addictive design features employed by Meta—and not any particular third-
party content—that cause the harm to children complained of in the complaint.”); Dkt. 1239-1, pp
10-11 (Massachusetts superior court held that because “the claims are based, not on Instagram’s
third-party content, but its features regardless of content,” “Meta is not entitled to dismissal under
Section 230.”).

1 *Internet Brands* clearly applies to this case, as do the several cases cited in the State AG
 2 Order agreeing that deception claims are not barred by Section 230. *Yolo* does not alter that
 3 consensus, at least on the facts alleged in this case. Thus, there exists no real ground for
 4 difference of opinion on the binding law.

5 Finally, on the third prong, Meta's proposed question only materially advances ultimate
 6 termination of the litigation if the AGs' unfairness claims are dismissed. That is, the AGs'
 7 question is logically antecedent to Defendants'. The AGs ask whether Section 230 demands
 8 dismissal of unfairness claims based on certain product features. The Defendants, in turn, ask
 9 whether deception claims based on certain features can proceed when unfairness claims based on
 10 the same features have been barred. That is, the issue raised by the AGs (whether unfairness
 11 claims should be dismissed) forms the predicate for Meta's issue (whether deception claims must
 12 be dismissed with unfairness claims). If dismissal of the unfairness claims were reversed, Meta's
 13 appeal would be moot. The logical order of operations, therefore, is to allow review of the AGs'
 14 question first.

15 **IV. CONCLUSION**

16 Because Meta's proposed appeal of the AGs' deception claims depends on first answering
 17 whether the AGs' unfairness claims can proceed, this Court should not consider certifying Meta's
 18 issue unless it first determines to certify the State AGs' issue. If the Court does certify the State
 19 AGs' issue, then the State AGs take no position on the Court also certifying Meta's issue,
 20 although it appears to present a much weaker case for interlocutory review.

24 Dated: January 14, 2025

Respectfully submitted,

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